

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**COURT - 1**

ITEM No 129  
CP(IB) 25 of 2019

**Order under Section 10 IBC**

**IN THE MATTER OF:**

DMB Paper Mills Pvt Ltd

V/s

Union Bank of India

.....Applicant

.....Respondent

**Order delivered on ..24/11/2021**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Ajai Das Mehrotra, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the IRP/RP :

For the Respondent :

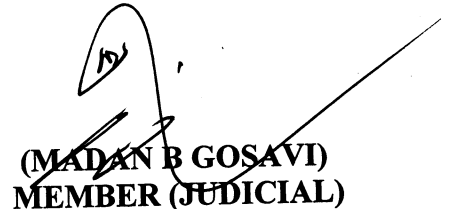
**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.



(AJAI DAS MEHROTRA )  
MEMBER (TECHNICAL)



(MADAN B GOSAVI)  
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
COURT-1**

**CP (IB)No.25/NCLT/AHM/2019**

**In the matter of:**

**M/s. DMB Papers Mills Pvt Ltd.**  
(CIN: U36998GJ1997PTC032067)  
(Through its Director Mr. Ifan Khan  
Having its Registered Office at:  
R/Plot No.352, Sneh Ganga,  
Near Upashna School,  
GIDC Bunglow Area,  
GIDC Vapi, Valsad,  
Gujarat-396195

**Applicant/Corporate  
Debtor**

**VERSUS**

**Union Bank of India,**  
Juhu Vile Parle (West) Branch,  
Mumbai.

**Respondent**

**Order reserved on 02.11.2021  
Order pronounced on 24.11.2021**

**Coram: Hon'ble Mr. Madan B. Gosavi (Member Judicial)  
Hon'ble Mr. Ajai Das Mehrotra (Member Technical)**

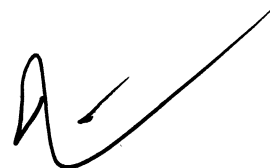
**Appearance:**

Mr. Pawan S. Godiawala, Advocate for the Corporate  
Applicant/Debtor.  
Mrs. Nalini Lodha, Advocate for the Respondent.

**ORDER  
[Per: Bench]**



1. The present application has been filed by the Applicant/Corporate Debtor through its director Mr. Yakub Khan, under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IB Code**") read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with under Section 13 and 14 of the IB Code, 2016 for initiation of Corporate Insolvency Process in respect of the corporate applicant i.e. M/s. DMB Papers Mills Pvt Ltd., the Corporate Debtor being the applicant itself.
2. The Applicant was incorporated on 8<sup>th</sup> April, 1997 under the Companies Act, 1956 with the Registrar of Companies, Gujarat, having its registered office situated at R/Plot No. 352, Sneh Ganga, Near Upashna School, GIDC Bunglow, Area, GIDC Vapi, Valsad, Gujarat, CIN No. U36998GJ1997PTC032067, hence this Authority has jurisdiction to hear and decide the present application.



3. It is submitted by the applicant that the Board of Directors of the applicant company passed a Resolution on 1<sup>st</sup> December 2018 proposing for initiation of Corporate Insolvency Resolution Process in respect of the company by way of filing a necessary application, under Section 10 of the Code before this Adjudicating Authority.
  
4. As per the present application, the Authorised Share Capital and the Issued, Subscribed, Paid-Up Share Capital of the Applicant is Rs. 20 crores.
  
5. It is further submitted by the applicant that they have passed the Board Resolution as well as Special Resolution in the Extraordinary General Meeting dated 20<sup>th</sup> December 2018, authorizing Mr. Irfan Khan, director, to file an application under section 10 of the IB Code, 2016, r.w. Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate CIRP before the Adjudicating Authority.



6. It is further submitted by the applicant that there is only one financial creditor for the debt of Rs.35 crore excluding related party financial creditors in the company.
7. It is further submitted by the applicant that the assets of the company are worth more than the debt due and payable to the Bank. The Applicant Company has filed the audited financial statement for the financial year ending 31.03.2017 and 31.03.2018 and has annexed it to the application.
8. The applicant further submitted that the respondent declared the account of the applicant as NPA and initiated actions against the applicant, due to which the applicant is not in a position to get re-connection from Dakshin Gujarat Vij Company Limited and the sundry debtors are also not paying their dues.
9. The Applicant has also filed the writ petition before the Hon'ble High Court at Judicature at Bombay in



December 2018 and Hon'ble High Court rejected the applicant's writ petition and passed the following order -:

*"The Petitioner is challenging the auction of the Respondent bank under the SARFAESI Act. The Petitioner has an alternate remedy before the DRT. In the circumstances. We are not inclined to entertain the Petition. The Petition to stand disposed of accordingly".*

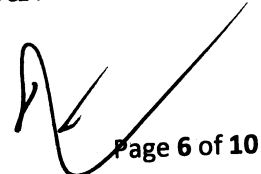
10. It is submitted by the respondent that the Applicant has defaulted in making repayment of the dues and interest on credit facilities available from the respondent. Thereafter, the account of the applicant with the respondent, i.e. Union Bank of India, Vile Parle Branch, was classified as a Non-Performing Asset account and a sum of **Rs. 36,52,87,983.65/-** was outstanding as on 30.09.2017 towards the respondent.
11. It is submitted by the respondent that the applicant has on the previous occasions deliberately failed to honor its promises and commitments which were given to the

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respondent, to discharge its liabilities, and the respondent has given reasonable time to the applicant to repay its liabilities.

- 12.** It is further submitted by the respondent that a Demand Notice dated 27.06.2018, under Section 13(2) of the SARFAESI Act, 2002, has been sent to the applicant by the Union Bank of India. However, the applicant failed to discharge the liability within 60 days from the date of receipt of the Notice issued and as per the provisions of the Act, the respondent is duly entitled to take any further action after the expiry of 60 days of the notice period.
- 13.** Thereafter, the respondent issued two notices for taking possession of the Industrial Plot including factory land & building, and for possession of residential plot & bungalow of the applicant, respectively.
- 14.** It is further submitted by the respondent that this application is a malafide attempt and abuse of the legal process by the applicant with the sole objective to initiate



CIRP so that moratorium gets imposed under Section 14 of the IB Code, and thereby restraining the respondent from enforcing and taking possession of the assets.

15. In the present application, the Applicant has proposed the name of Mr. Pinakin Shah, as an Interim Resolution Professional whose IBBI Reg. No. is IBBI/IPA-002/IP-00106/2017-18/10248. It has further annexed a copy of the written consent received from the proposed Interim Resolution Professional in Form-2, showing his willingness to accept such assignment to act as IRP.
16. Heard the learned Counsels for the applicant & the respondent and perused the material on record, it is admitted fact that default has been committed by the corporate applicant as Union Bank of India has already initiated the proceeding against the corporate applicant under SERFAESI Act, 2002, and special resolution has already passed by the corporate applicant with the requisite majority to initiate the CIRP proceedings. The contention of the Union Bank of India in respect that



corporate debtor has filed the present application to disrupt proceedings initiated under SARFAESI Act, 2002 against the corporate debtor is not sustained as IB code has an overriding effect. Hence, we are of the considered view that the proceedings initiated by the Union Bank of India are not relevant. The present application complies with the provisions of section 10 of the IB Code. Hence the present application is allowed with the following directions.

### Order

I. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) *any action to foreclose, recover or enforce any security interest created by the corporate*

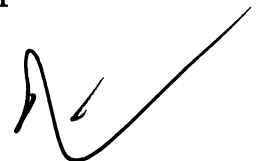


*debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

**II.** The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

**III.** The applicant has proposed the name of IRP. Therefore, this Adjudicating Authority hereby appoints Mr. PinakinShah having Registration No. IBBI/IPA-002/IP-00106/2017-18/10248, as Interim Resolution Professional, who shall take necessary steps as envisaged under Sections 15, 17, and 18 of IBC, 2016. The IRP is further directed to convene the first meeting of COC within 30 days from the date of his appointment and to submit his report within the said period. In terms of section 17 of IBC, 2016, the Board of the Corporate Debtor



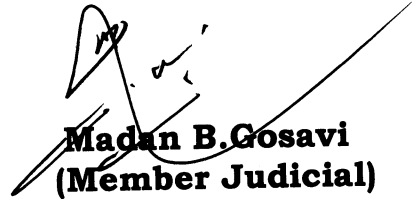
shall stand suspended.

**IV.** Registry is directed to communicate a copy of this order to the Applicant at its registered address as well as to the Interim Resolution Professional and the Registrar of Companies, Gujarat, after the completion of necessary formalities.

**17.** Accordingly, the present CP (IB) No.25/NCLT/AHM/2019 is admitted.  
No order as to costs.



**Ajai Das Mehrotra  
(Member Technical)**



**Madan B. Gosavi  
(Member Judicial)**

Abhishek Singh/LRA